



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1997

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR97-2818

Dear Mr. Dempsey:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111326.

The City of Garland (the "city") received the following request for records:

Copies of all written requests for information made to the city under the Texas Public Information Act, Tex. Gov't Code sections 552.001-353, since Jan. 1, 1995. Also, copies of the city's response to each request during that time.

You object to producing any responsive information for the period from January 1, 1996 through the date of the request. The city is engaged in pending litigation, *City of Garland v. Dan Morales, Attorney General*, No. 97-10373 (98th Dist. Ct. Travis County, Tex), concerning access to records. You submitted to this office a request for production of documents from the Dallas Morning News, which is an intervenor in the pending litigation. That production request to the city seeks all written requests for information made to the city under chapter 552 of the Government Code, along with the city's responses to those requests, for the period beginning January 1, 1996. It is the policy of this office not to address issues that are being considered in pending litigation. Accordingly, we will not issue a ruling as to the request for information from January 1, 1996 to the date of the request. This will allow the trial court to resolve the issue of whether these records must be released to the requestor.

We will, however, consider the portion of the request that seeks records from January 1, 1995 through December 31, 1995. Your correspondence states:

The City has no objection to producing the records requested from January 1, 1995 through December 31, 1995, except for information released pursuant to the special right of access provisions of Section 552.023 and the confidential submissions accompanying requests for open records opinions which have been ruled excepted from disclosure by the attorney general.

You submitted to this office for review representative samples of the types of documents that you contend are responsive to the request and are excepted from disclosure.¹ The representative sample includes documents that were submitted to this office for review as part of a request for a decision. In Open Records Decision No. 95-1452 (1995), this office determined that the submitted records are confidential pursuant to former section 51.14(d) of the Family Code and thus may not be disclosed. We agree that documents ruled confidential by this office pursuant to requests for information made during the applicable time period may not be disclosed.

You also assert that records provided during the applicable time period under the provisions of section 552.023 of the Government Code may not be disclosed in response to the existing request. Section 552.023 provides, in part:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's authorized representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

A governmental body may not release, to the public, information that is confidential and protects the privacy rights of individuals. Gov't Code 552.352 (providing that releasing confidential information can be criminal offense and can constitute official misconduct). Section 552.023 provides that, while the governmental body may not release confidential information to the public, the governmental body must grant a special right of access to the individual whose own privacy interests are the only interest that are at stake.

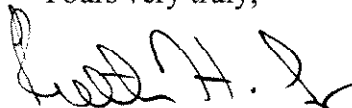
¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You submitted to this office as a representative sample a 1997 request letter from the spouse of an apparent suicide victim, seeking information about the death. The information responsive to the request includes details about the spouse's emotional reactions upon discovery of the body and medical information about members of the family. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by constitutional or common-law privacy and under certain circumstances excepts from disclosure private facts about individuals. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. An individual's right of common-law privacy is a personal right that does not extend past that individual's own death. Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981) at 1. Thus, a common-law right of privacy would not generally protect records of an individual who is deceased.

Although there is no privacy protection for the individual who committed suicide, we assume that you are asserting the privacy interests of the spouse and family of the victim. Depending on the circumstances, we think that information that the city has provided in compliance with the section 552.023 access provision may generally be released to the public if the request letter, the city's response, and the documents at issue are de-identified as to the individuals whose privacy interests are at stake.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 111326

Enclosures: Submitted documents

cc: Mr. Charles Ornstein
Dallas Morning News
625 W. Centerville Road, Suite 109
Garland, Texas 75041
(w/o enclosures)